



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2012-0625]

RIN 1625-AA09

Drawbridge Operation Regulation; Schuylkill River,
Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulation that governs the operation of the Conrail Bridge over the Schuylkill River, mile 6.4 near Christian Street, at Philadelphia, PA. The new rule will change the bridge name to CSX Bridge and the current regulation requiring a two hour advance notice to allow the bridge to remain in the closed position for the passage of vessels. There have been no requests for openings in 13 years.

DATES: This rule is effective [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2012-0625 and are available online by going to

<http://www.regulations.gov>, inserting USCG-2012-0625 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Jim Rousseau, Bridge Management Specialist, Fifth Coast Guard District; telephone 757-398-6557, e-mail James.L.Rousseau2@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
§	Section Symbol
U.S.C.	United States Code

A. Regulatory History and Information

On August 10, 2012, we published a NPRM entitled

Drawbridge Operation Regulation; Schuylkill River, Philadelphia, PA in the FR (77 FR 47792). We received no comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

CSX Transportation has requested a change in name and the operation regulation of the Conrail Bridge across Schuylkill River, mile 6.4, at Philadelphia PA. In 1999, CSX acquired the Conrail Bridge but never changed the name. From the time of purchase up to the present day, the Conrail Bridge has been an active and heavily used CSX railroad line. The bridge supports 51 MGT of freight every year. However, over the past 13 years the bridge logs show that there has been no request requiring an opening at the bridge. Therefore, the Coast Guard authorizes the above mentioned bridge to remain in the closed to navigation position in accordance with 33 CFR 117.39.

The vertical clearance of the Swing Bridge is 26 feet above mean high tide in the closed position and unlimited in the open position. The current operating schedule for the bridge is set out in 33 CFR 117.905 (e). The current two hour advance notice is no longer necessary because of the lack of openings.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard will revise 33 CFR 117.905(e) for the

Conrail Bridge over Schuylkill River, mile 6.4, at Philadelphia, PA. The current regulation states: The draw of the Conrail Bridge, mile 6.4 near Christian Street, Philadelphia, shall open on signal if at least two hours notice is given. The new regulation would change the bridge name to CSX Bridge and allow the bridge to not open for the passage of vessels. The change of the operating regulation will reflect the current use of the waterway and not inhibit those vessels from transiting under the bridge. Pursuant to the NPRM, there was a comment period of 30 days and no comments were received.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The change is

expected to have minimal impact on mariners, because there have been no requests for openings for the past 13 years, and there is no anticipated change to vessel traffic.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This final rule would affect the following entities, some of which might be small entities: the owners and operators of vessels intending to transit in that portion of the Schuylkill River that have a mast height of greater than 26 feet. Due to the fact that there have been no requests for openings in 13 years, this final rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure

by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with

Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in

complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2-1, paragraph (32) (e), of the Instruction.

Under figure 2-1, paragraph (32) (e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1.

2. Revise §117.905(e) to read as follows:

§ 117.905 Schuylkill River.

* * * * *

(e) The draw of the CSX Bridge, mile 6.4 near Christian Street, Philadelphia, need not be opened for the passage of vessels.

Dated: September 28, 2012

Steven H. Ratti
Rear Admiral, United States Coast Guard
Commander, Fifth Coast Guard District

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